

COPY

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Fairfield, California, as of March 1, 2016 by and between the City of Fairfield, a municipal corporation (the "CITY") and The Law Offices of Jones and Mayer ("CONSULTANT"), who agree as follows:

1. SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A and B."

2. PAYMENT. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "A." The payments specified in Exhibit "A" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "A."

3. FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. GENERAL PROVISIONS. The general provisions set forth in Exhibit "B" are part of this Agreement

5. EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

EXECUTED as of the day first above-stated.

City of Fairfield, a municipal corporation-CITY

By: _____

David A. White
City Manager

Law Offices of Jones & Mayer-CONSULTANT

By: _____

EXHIBIT A
SCOPE OF SERVICES & PAYMENT PROVISIONS

1. **TERM.** The effective date of this Agreement is March 01, 2016.
2. **SCOPE OF DUTIES.** CITY hires CONSULTANT to provide legal services in connection with a general review of policies and procedures, and legal counsel related to law enforcement issues on an as required basis. CONSULTANT's services may include representation of CITY in administrative hearings or before any government agencies or arbitration tribunals. CITY represents that all necessary municipal laws, rules and regulations have been complied with in executing this Agreement for professional services.
3. **LEGAL FEES.** CITY agrees to pay for legal services at the following rates: A monthly retainer basis of up to 5.0 hours per month of service in the amount of \$1,275.00 per month, billed at the end of the month. Unused time, in any month, is "banked" and saved for future use as long as it is used within one year of the commencement of the Agreement. Additional time over five hours per month will be billed at the end of each month at the rate of \$255.00 per hour. This rate is only eligible to be adjusted once annually. Should CITY request that CONSULTANT conduct an Internal Affairs investigation ("IA") the investigator's fees are \$175.00 per hour. Work accomplished by the use of a paralegal will be billed at the rate of \$110.00 per hour. Consultant charges in minimum of .10 units of an hour. *
4. **COSTS AND EXPENSES.** In addition to paying legal fees, CITY shall reimburse CONSULTANT for all costs and reasonable expenses incurred by CONSULTANT, including but not limited to fees fixed by law or assessed by public agencies, filing fees, deposition costs, witness fees, long distance telephone calls, messenger and other delivery fees, postage, investigation expenses, and other similar items if approved in writing by CITY in advance of CONSULTANT incurring the expense. Travel expenses shall only be incurred with the prior written approval of CITY. CONSULTANT shall obtain CITY's written consent before incurring any cost in excess of \$200.00
5. **STATEMENTS.** CONSULTANT shall send CITY monthly statements for fees and costs incurred. CITY shall pay CONSULTANT's statements within 30 days of receipt of the statement. Should CITY's outstanding balance become past due beyond 60 days, CONSULTANT reserves the right to impose a service charge of 1.5% per month upon the unpaid balance. **DISCLAIMER OF GUARANTEE.** Nothing in this Agreement and nothing in CONSULTANT's statements to CITY will be construed as a promise or guarantee about the outcome of CITY's matter. CONSULTANT makes no such promises or guarantees. CONSULTANT's comments about the outcome of CITY's matter are expressions of opinion only.

EXHIBIT "B"
GENERAL PROVISIONS

(1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

(2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT'S profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession including, but not limited to, a City of Fairfield Business License.

(3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

(4) INSURANCE.

(a) WORKERS' COMPENSATION. During the term of this Agreement, CONSULTANT shall fully comply with the terms of the law of California concerning workers' compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability CONSULTANT may have for worker's compensation. Said policy shall also include employer's liability coverage no less than \$1,000,000 per accident for bodily injury or disease.

(b) GENERAL LIABILITY INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement, commercial general liability insurance in the amount of \$1,000,000 per occurrence for bodily injury, personal, injury, and property damage. Said insurance shall provide (1) that the CITY, its officers, agents, employees and volunteers shall be named as additional insured's under the policy, and (2) that the policy shall operate as primary insurance, and that (3) no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered thereunder.

(c) AUTOMOBILE LIABILITY INSURANCE. CONSULTANT shall obtain at its sole cost and keep in full force and effect during the term of this agreement automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage. Said insurance shall provide (1) that the CITY, its officers,

agents, employees and volunteers shall be named as additional insureds under the policy, and (2) that the policy shall operate as primary insurance, and that (3) no other insurance effected by the CITY or other named insureds will be called upon to cover a loss covered there under.

(d) CERTIFICATES OF INSURANCE. CONSULTANT shall file with CITY's Chief of Police upon the execution of this agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or non-renewal will be made during the term of this agreement, without thirty (30) days written notice to the Chief of Police prior to the effective date of such cancellation, or change in coverage.

CONSULTANT shall file with the Chief of Police concurrent with the execution of this agreement, the CITY's standard endorsement form (attached hereto) providing for each of the above requirements.

(e) PROFESSIONAL LIABILITY INSURANCE. During the term of this Agreement, PROFESSIONAL shall maintain a Professional Liability Insurance policy in the amount of not less than \$1,000,000.

(5) CONSULTANT NOT AN AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever, as an agent. CONSULTANT shall have no authority, express or implied, pursuant to the Agreement, to bind CITY to any obligation whatsoever.

(6) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

(7) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

(8) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products of whatsoever nature which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a substantial, first-class, and workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

(9) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by CITY for its convenience upon written notification to CONSULTANT. CONSULTANT shall be entitled to receive full payment for all services performed and all costs incurred to the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and uncompleted products up to the date of receipt of written notice to cease work shall become the property of CITY.

(10) PRODUCTS OF CONSULTING. All products produced by CONSULTANT pursuant to this Agreement shall be the property of the CITY.

(11) INDEMNIFY AND HOLD HARMLESS. CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to, or death of, any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by the CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the CITY if this provision is violated.

(13) CONSULTANT – NOT PUBLIC OFFICIAL. CONSULTANT is not a "public official" for the purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond the rendition of information, advice, recommendation or counsel.

(14) EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one

calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

- (A) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited-liability corporation, non-profit corporation or other form of organization.
- (B) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.
- (C) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT's federal tax identification number.

EXHIBIT "C"

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$ _____
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$ _____.

3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit C. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit C. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.